

GUARDIANSHIP

2

Get a Permanent Appointment for an Adult

Part 2: Service and Notice
of the Court Hearing
(Instruction Packet)

SELF-SERVICE CENTER

GUARDIANSHIP

GET A PERMANENT APPOINTMENT FOR AN ADULT

Part 2: Service and Notice of Court Hearing (Instructions Only)

This packet contains instructions for service and notice of court hearing for a permanent appointment for guardianship for an adult. Be sure the documents are in the following order:

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SELF-SERVICE CENTER

INFORMATION ON LEGAL NOTICE FOR GUARDIANSHIP FOR AN ADULT

1. **WHAT IS LEGAL NOTICE:** After you have filled out **AND** filed the guardianship Petition and other court papers with the Court, you must tell **all** interested persons about the papers and Court hearing.

A. WHAT COURT DOCUMENTS DO I NEED TO GIVE NOTICE ABOUT?

These are the documents you need to give the people who are entitled to notice:

- **Notice of Hearing:** This document provides you with the hearing date, location, and the name of the Judge/Commissioner who will hear the case.
- **Petition:** This document explains what you want the Judge/Commissioner to do and why.

It is recommended that you give people copies of **all** documents you filed with the court so you know you gave those people copies of the right documents. You then must list in the PROOF OF NOTICE (see section C, below) the names of all the documents you gave copies of, and the people you gave the documents to.

B. WHAT ARE THE WAYS TO GIVE LEGAL NOTICE?

- **"Personal Service"** means giving formal notice that is required in some cases for some persons. It requires that a registered process server or the sheriff serves the documents on the interested persons or that a person accept service of the papers. When personal service is required, it means the law is written to make sure that a person who needs notice of a case is given that notice.

Note: See **Step 4** for instructions on how to give personal service.

- **Mail or hand delivery** is a less formal but important way of giving notice to other persons in some cases. When you are required to give notice by mail, 1st class prepaid postage mail is usually acceptable. Certified or Registered mail with return receipt is an extra step you can take to prove that the person you want to have notice received the notice.

Note: Service by **mail or hand delivery** is only allowed in some cases, so make sure you read the instructions to see if you can use this method of service.

- **Publication of Notice** is when you do not know the address of the person to whom you need to give notice. For publication, you need to try to find the person who is supposed to get notice, and prove to the court you did everything you could to try to find the person or to get the person's address. Then, you must publish the Notice **at least 3 times** in a newspaper in the county where the court hearing is held. See ARS § 14-1401.

C. HOW DO I SHOW THAT I GAVE LEGAL NOTICE?

- **PROOF OF NOTICE** is the document you sign and file with the court to prove you gave notice to all interested persons, and how you did it. You must fill out this form after you have served the documents on all interested persons. (**See Step 1A**).

There are other documents that go with the PROOF OF NOTICE to show that service was made. These documents may include the following:

- 1) AFFIDAVIT OF PUBLICATION,
- 2) AFFIDAVIT OF SERVICE signed by the process server or sheriff, **OR**
- 3) ACCEPTANCE OF SERVICE

D. WHEN CAN YOU SKIP GIVING LEGAL NOTICE?

- WAIVER OF NOTICE is when a person required to get notice waives that right and signs the form called WAIVER OF NOTICE. Generally, but not always, a person who is required to be **personally served** can accept service by signing the WAIVER OF NOTICE. However, if the incapacitated adult who needs the guardian signs the Waiver, that adult must also attend the hearing or service is not good, **OR**
- Party is present at the hearing and will accept service. Only rely on this method if you are **absolutely** certain the person will be at the hearing and will accept service.

2. TIME FRAMES TO GIVE LEGAL NOTICE: Generally, you must give **all** interested persons notice of the court papers at least **14 days before the hearing**. If you are giving NOTICE BY PUBLICATION, the first publication must be at least **14 days** before the hearing.

Note: The newspaper will not provide the AFFIDAVIT OF PUBLICATION to you until all **3 notices** have been published.

3. WHO IS ENTITLED TO LEGAL NOTICE: Here is a guide when, and to whom, you must give notice of guardianship of an adult (ARS 14-5309):

- **INCAPACITATED ADULT:** **Personally serve** the adult who you say needs the guardianship.

Note: WAIVER OF NOTICE by the adult is **not legal** unless the adult attends the court hearing in person.

- **PARENTS AND/OR SPOUSE OF THE INCAPACITATED ADULT:** **Personally serve** the spouse and parents of the adult, if they are in the State of Arizona. Otherwise, you can give notice by **mail or hand-delivery** if they are not in the State of Arizona or by **publication** if you do not know the address of the spouse or parents.
- **OTHERS:** Give notice by **mail, hand-delivery or publication** to all the following:
 - 1) Any adult children of the person;
 - 2) Any person who is serving as the guardian or conservator or who has the care and custody of the person;
 - 3) If the person has no parent or spouse or adult children, then to the closest adult relative of the person, if any can be found, **AND**
 - 4) Any person who has filed a Demand for Notice.

4. THE METHODS OF PERSONAL SERVICE: There are several ways to give personal service that will be accepted by the Court.

- **Acceptance of Service:** The person must sign the Acceptance form in front of a notary and return it to you, but the signature date cannot be earlier than the date you filed the court papers. The signature on this form does **not** mean the person agrees with the papers. It means that he or she admits receiving the papers, without being served in person by a Sheriff or Process Server.

- **Process Server:** You generally must pay this person or company to do this for you. A process server will give the papers to the person at home, work, or other location. The process server will give the Court a sworn Affidavit stating that the person was served. The disadvantage of this method is the cost and that it requires the process server to find the person. If you decide to use this method, look under "PROCESS SERVER" in the Yellow Pages to find someone who can serve your papers.
- **Sheriff:** This method requires you to contact the Sheriff's Office in the County where the person lives to arrange for a Sheriff's deputy to serve the papers. This method requires you to pay a fee to the Sheriff's office, unless you receive a Waiver or Deferral, which is available through the Court for persons who cannot afford the cost of Service. The Waiver or Deferral will require you to explain to the Sheriff why your circumstances call for this method.

5. WHAT ELSE TO KNOW ABOUT LEGAL NOTICE: Even if you are required to **personally serve** someone, you still have to give notice by **mail or hand-delivery** to other interested persons. You will still have to sign and file the PROOF OF NOTICE to show the Judge/Commissioner that you gave notice to everyone as required by law.

6. HOW DOES A PERSON WHO GETS NOTICE OBJECT TO THE PETITION: Sometimes a person who receives Notice wants to object to the Petition, or tell the Judge/Commissioner something besides what is in the Petition. For more information on objecting to a court process, see Guardianship and/or Conservatorship Packet 3 called **To Object to a Court Proceeding**, which includes Court forms and instructions to file a written Response.

7. COMPLETE THE NOTICE OF HEARING AND PROOF OF NOTICE: After Notice is done, you must complete the PROOF OF NOTICE form. Be sure to list the copies of papers given, and the names of the persons to whom you gave the copies. Also list the date you gave the person copies, the type of service, and the relationship between the person to whom you gave copies and the person for whom the guardian is or will be appointed. (This person is called the ward). Be sure the attorney for the ward gets copies, if applicable.

Make **3 copies** of the NOTICE OF HEARING, the PROOF OF NOTICE, the ACCEPTANCE OF SERVICE (if any), the WAIVER OF NOTICE (if any), and assemble them in **4 packets**: the originals and 3 complete sets of copies.

8. FILE THE NOTICE OF HEARING, ANY WAIVER, AND PROOF OF NOTICE:

A. PREPARE TO FILE: File the following with the Clerk of the Court, Probate Registrar at least **10 business days** before the scheduled hearing date:

- NOTICE OF HEARING,
- PROOF OF NOTICE, **AND**
- Any WAIVER OF NOTICE or ACCEPTANCE OF SERVICE, if applicable

B. GO TO THE CLERK: Take the **original and 2 copies** of the NOTICE OF HEARING, PROOF OF NOTICE and WAIVER OF NOTICE/ACCEPTANCE OF SERVICE (if any) to the Probate Registrar who will file the original and stamp "copy" on each of the **2 copies** and return them to you.

C. GO TO PROBATE ADMINISTRATION: Take **1 conformed (date-stamped) copy** of the NOTICE OF HEARING, PROOF OF NOTICE, and WAIVER OF NOTICE/ACCEPTANCE OF SERVICE (if any). Probate Administration will give these to the Judge/Commissioner who will hear your case.

Note: Keep a copy of each document for your records and bring them with you to the court hearing.

9. **NEXT STEP:** Now you are ready to prepare for the court hearing, and get the rest of the paperwork in order.
10. **OTHER HELP:** If you still have questions about this procedure, you can ask a lawyer for legal advice. You can look up a lawyer in the telephone book under “attorneys.” Also, the Self-Service Center has a list of lawyers who will help you help yourself. The list shows where the lawyers are located, how much they charge to look over the court papers or answer your questions, and what their experience is. **All forms referred to in these instructions are available at the Self-Service Center.**

Do not copy
or file this page

SELF-SERVICE CENTER

PROCEDURES: HOW TO SERVE LEGAL PAPERS – ACCEPTANCE OF PERSONAL SERVICE

GUARDIANSHIP, CONSERVATORSHIP, INFORMAL PROBATE OF ESTATES

(Person being served cannot sign ACCEPTANCE OF SERVICE until after you have filed your court papers)

STEP 1 ASK THE PERSON TO ACCEPT SERVICE OF THE PAPERS:

A. IF THE PERSON BEING SERVED GOES WITH YOU TO THE FILING COUNTER:

- Give the other person his or her set of copies.
- Stay at the counter with that person.
- The person must have a valid picture identification with him or her to sign the original ACCEPTANCE OF SERVICE. The person must then sign the Acceptance in front of the Clerk, which the Clerk will notarize for **free**, **OR**

B. IF THE PERSON WILL NOT OR CANNOT GO WITH YOU TO FILE PAPERS:

- Arrange a meeting place and time with the person before a Notary Public. Remind the person being served to bring a valid picture identification with him or her to the Notary Public.
- Give the person his or her set of copies.
- Have the original of the court papers with you in case the person wants you to prove that you have it, **OR**

C. IF YOU CANNOT GIVE THE PERSON THE PAPERS BY HAND:

- Mail **all** the copies to the person with an explanation, such as the form letter attached.
- The person must sign and date the original Acceptance.
- The signature must be witnessed in front of a notary public.
- You should write the date the person signed the Acceptance on your copy.

NOTE: If the person does not send back the Acceptance, ask him or her again to send it back. If he or she still does not send it back, **then you have to serve him or her by one of the other processes.**

STEP 2 FILE THE ACCEPTANCE OF SERVICE AT THE COURT:

A. FILING THE PAPERS:

- Go back to the Clerk of the Court where you filed your original court papers and file the **original** of the ACCEPTANCE OF SERVICE signed by the person.
- Give the Clerk the **originals** of the following documents:
 - 1) **NOTICE OF HEARING**
 - 2) **ACCEPTANCE**, signed by the person in front of a notary public
 - 3) **WAIVER OF NOTICE** if person signed one

DO NOT BRING CHILDREN TO COURT.

(YOUR NAME)

(ADDRESS)

(CITY/STATE/ZIP CODE)

(TELEPHONE NUMBER)

(DATE)

(PERSON'S NAME)

(ADDRESS)

(CITY/STATE/ZIP CODE)

Re: Acceptance of Court Papers for: _____

Dear _____
(PERSON'S NAME)

I have filed court papers for (list title of petition or complaint here)_____. Enclosed is a copy of the following papers for you: (WARNING: at the least, documents listed should include Petition on whatever matter is before the court, and Notice of Hearing on the Petition)

1. _____
2. _____
3. _____
4. _____
5. _____

I have also enclosed an Acceptance of Service which I would like you to sign in front of a Notary Public and return to me in the self-addressed stamped envelope to save me the cost of service of process.

Even if you sign the Acceptance, you still have the right to object to the court case. If you disagree with what is in the Petition, you can file a written Objection to the part you disagree about. You can also come to the court hearing and tell the judge what you think about the Petition.

Sincerely,

(YOUR SIGNATURE)

Enclosures

SELF-SERVICE CENTER

PROCEDURES: HOW TO SERVE LEGAL PAPERS-- BY PRIVATE PROCESS SERVER

GUARDIANSHIP, CONSERVATORSHIP, INFORMAL PROBATE OF ESTATES (Arrange for service ONLY after you have filed your court papers)

STEP 1 ARRANGING FOR SERVICE:

- Find a Private Process Server by looking up in the Yellow Pages under "Process Servers."
- There is a filing fee for all Petitions or Complaints, and Responses or Answers, and there are Service Fees. You may request a Waiver or Deferral of the filing fees (and the Sheriff's Service Fees if you intend to use the Sheriff's Office for service) at the time you file your papers with the Clerk of the Court.

STEP 2 DOCUMENTS NEEDED FOR SERVICE:

Give the following documents to the Process Server:

- A set of copies of the court papers for the person being served,
- A picture or a written physical description of the other person,
- A written description of the automobile that the other person drives,
- The address where the other person can be served.
- The cash you need to pay for this service. (You can call ahead of time to ask the Process Server how much money it will cost.)

STEP 3 AFTER SERVICE IS GIVEN:

- Wait until Service is given. The Process Server will mail you a copy of the AFFIDAVIT OF SERVICE after he or she serves the other person with the papers.

Note: If the Process Server does not file an AFFIDAVIT OF SERVICE with the Clerk of Court, you must get the Affidavit from the Process Server and file it.

DO NOT BRING CHILDREN TO COURT.

SELF-SERVICE CENTER

PROCEDURES: HOW TO SERVE OF LEGAL PAPERS-- BY SHERIFF

**Guardianship, Conservatorship, Informal Probate of Estates
(Arrange for service ONLY after you have filed your court papers)**

STEP 1 ARRANGING FOR SERVICE:

- Go to the sheriff's office with the papers for Service. The Sheriff's Office is located in downtown Phoenix. Even if you file your case at the Southeast Court in Mesa or at the Northwest Court in Surprise, you must still come to the Sheriff's office to arrange for Service. The address for the Sheriff's office is:

The Sheriff's Office
201 West Jefferson Street
Central Court Building
Phoenix, Arizona 85003
(602) 256-1835

- There is a filing fee for all Petitions and there are Service Fees. You may request a **WAIVER OR DEFERRAL OF FILING FEES** (and the Sheriff's Service Fees if you intend to use the Sheriff's Office for service) at the time you file your papers with the Clerk of the Court.

STEP 2 DOCUMENTS NEEDED FOR SERVICE:

- Complete the attached sheet for identifying the other person (Page 2) and bring the following with you to the Sheriff's office:
 - 1) A set of copies of the court papers for the person being served.
 - 2) A picture or a written physical description of the other person.
 - 3) A written description of the automobile the other person drives.
 - 4) The address where other person can be served.
 - 5) A Certified Order Waiving/Deferring Fees or a **\$200.00 deposit** fee payable with cash or money order.

STEP 3 AFTER SERVICE IS GIVEN:

- The Sheriff will mail you a copy of the **AFFIDAVIT OF SERVICE** after he or she serves the other person with the papers. The Sheriff may also file these papers instead of sending them back to you, however, make sure that the Affidavit was filed.

DO NOT COPY OR FILE
THIS PAGE

(YOUR NAME)

(ADDRESS)

(CITY/STATE/ZIP CODE)

(TELEPHONE NUMBER)

County Sheriff

(COUNTY)

(ADDRESS)

(CITY/STATE/ZIP)

NAME OF PERSON TO BE SERVED: _____

COURT CASE NUMBER: _____

I enclose a copy of the following documents: (LIST ALL DOCUMENTS YOU WANT TO BE SERVED)

1. _____
2. _____
3. _____
4. _____
5. _____

Please serve these papers on the person. His or her current address and physical description are:

(OTHER PERSON'S NAME)

(WORK ADDRESS)

ADDRESS)

(WORK CITY/STATE, ZIP) (HOME

(HOME CITY/STATE/ZIP)

SEX	RACE	BIRTH	HGT.	WGT.	EYES	HAIR	SSN

Please return a notarized Affidavit of Service to my address at your earliest convenience. Maricopa County Superior Court requires that each document served be named in the affidavit of Service.

☐ I enclose a deposit for \$200.00. I understand there is a \$16.00 service fee, \$2.40 per mile, one way, for each attempt at service travel fee, and a \$8.00 notary fee. I understand the difference between my deposit and the fees accrued for service will be billed or returned to me. **OR,**

☐ I enclose a certified copy of the Order for Waiver/Deferral of fees for Service of Process.

Thank you for your cooperation in this matter.

Enclosures:

(YOUR SIGNATURE)

SELF-SERVICE CENTER

PROCEDURES: HOW TO SERVE LEGAL PAPERS -- BY PUBLICATION

GUARDIANSHIP AND CONSERVATORSHIP CASES AND PROBATE OF ESTATE CASES

(Arrange for service **ONLY** after you have filed your papers in court)

STEP 1 HOW TO PUBLISH: If you are publishing Notice, you should complete the attached letter, describing the documents that need to be referenced by the newspaper for the publication.

A. IF YOU ARE PAYING THE PUBLICATION COSTS YOU MAY USE

any publication of general circulation not limited to those listed below, but they ***must*** use a format acceptable to the Court. Publications that regularly publish legal notices that are familiar with the requirements include the following:

- i. **THE RECORD REPORTER.** Call (602-417-9900) to determine the cost of publishing your legal ad and to confirm how you wish to pay. Visa, MasterCard, Discover, American Express, and checks or money orders made payable to the Record Reporter are accepted. The cost, for example, of publishing a notice about a guardianship and Conservatorship is currently \$40.20 (as of 6/6/2006).

Mail or deliver payment and the letter that is attached to this form along with a copy of the documents you filed with the Clerk, to: Record Reporter, Legal Advertising, 1505 N. Central, Suite 200, Phoenix 85004. **OR**

- ii. **THE ARIZONA BUSINESS GAZETTE.** Call (602) 444-7315 to determine the cost of publishing your legal ad and to confirm how you wish to pay. Visa, MasterCard, Discover, and checks and money orders, are accepted. The drop box and INSTRUCTION MEMO are located in the Old Courthouse, Probate Administration Filing Counter.

Mail payment and the letter that is attached to this form along with a copy of the documents you filed with the Clerk, to: Arizona Business Gazette, Legal Advertising, P. O. Box 194, Phoenix, AZ 85001, **OR** if you have already arranged payment, you may fax the documents to (602) 444-7364, *or* You may deposit the above in the DROP BOX near the Clerk of Superior Court's filing counter at 201 W. Jefferson in Phoenix. **OR**

- iii. Use any newspaper that publishes in this county,

B. IF YOU HAVE A COURT ORDER WAIVING/DEFERRING COSTS, use the ARIZONA BUSINESS GAZETTE *only*. Follow the instructions in A(ii) above and include the CERTIFIED ORDER WAIVING/DEFERRING COSTS and a copy of the letter and the documents.

Note: There is a filing fee for all Petitions and there are service fees. You may request a WAIVER OR DEFERRAL OF THE FILING FEES (and the Sheriff's or Publication service fees if you intend to use the Sheriff's Office or publication for service) at the time you file your papers with the Clerk of the Court.

STEP 2 WHEN TO FILE:

- **Wait** for the newspaper to send you a copy of the document called AFFIDAVIT OF PUBLICATION in about **5 weeks**. If the newspaper sends you an original, file the original.

DO NOT COPY OR
FILE THIS PAGE

Otherwise, make sure the original AFFIDAVIT OF PUBLICATION gets filed with the Probate Clerk.

STEP 3 GATHER THE PAPERWORK:

- Complete the original of the AFFIDAVIT OF CIRCUMSTANCES AND SERVICE BY PUBLICATION document which is attached.
- If the newspaper has not filed the AFFIDAVIT OF PUBLICATION, make sure it gets filed by using the attached AFFIDAVIT OF PUBLICATION FORM.
- Make a **copy** for yourself of the AFFIDAVIT OF CIRCUMSTANCES AND SERVICE BY PUBLICATION and AFFIDAVIT OF PUBLICATION.

STEP 4 FILE YOUR DOCUMENTS WITH THE COURT:

- Original of the AFFIDAVIT OF CIRCUMSTANCES and SERVICE BY PUBLICATION and **copy** of the publication, **AND**

Original of the AFFIDAVIT OF PUBLICATION you received from the newspaper unless the newspaper filed it for you. Make sure you bring a **copy** of the AFFIDAVIT OF PUBLICATION to the hearing.

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